

9 FAM 42.32(d)(2) FOURTH PREFERENCE SPECIAL IMMIGRANTS - CERTAIN U.S. GOVERNMENT EMPLOYEES

(i) General

(TL:VISA-101; 11-25-94)

(A) An alien is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) if a petition to accord such status has been approved by the Secretary of State. An alien may file such a petition only after, but within one year of, notification from the Department that the Secretary of State has approved a recommendation from the Principal Officer that special immigrant status be accorded the alien in exceptional circumstances and has found it in the national interest so to do.

(B) An alien may qualify as a special immigrant under INA 101(a)(27)(D) on the basis of employment abroad with more than one agency of the U.S. Government provided the total amount of full-time service with the U.S. Government is 15 years or more.

(C) Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of an alien classified under INA 203(b)(4), if not entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

[56 FR 51172; Oct. 1, 1991]

(ii) Special Immigrant Status for Certain Aliens Employed at the United States Mission in Hong Kong

(TL:VISA-101; 11-25-94)

(A) An alien employed at the United States Consulate General in Hong Kong under the authority of the Chief of Mission or an alien employed pursuant to section 5913 of title 5 of the United States Code is eligible for classification under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) provided:

- (1) The alien has performed faithfully for a total of three years or more;
- (2) The alien is a member of the immediate family of an employee entitled to such special immigrant status; and

(3) The welfare of the alien or the family member is subject to clear threat due directly to the employee's employment with the United States Government or under a United States Government official; and

(4) Subsequent to the Secretary's approval of the Principal Officer's recommendation and finding it in the national interest to do so, but within one year thereof, the alien has filed a petition for status under INA 203(b)(4) which the Secretary has approved.

(B) An alien desiring to benefit from this provision must seek such status not later than January 1, 2002.

(C) For purposes of section 9 FAM 42.32(d)(2)(ii)(A)(2), the term "member of the immediate family" means the definition (as of November 29, 1990) in Volume 6 of the Foreign Affairs Manual, section 117k, of a relative who has been living with the employee in the same household.

[56 FR 51172; Oct. 1, 1991]

(iii) Priority Date

(TL:VISA-101; 11-25-94)

The priority date of an alien seeking status under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) shall be the date on which the petition to accord such classification is filed. The filing date of the petition is that on which a properly completed form and the required fee are accepted by a Foreign Service post.

[56 FR 51172; Oct. 1, 1991]

(iv) Petition Validity

(TL:VISA-101; 11-25-94)

Except as noted in this paragraph, the validity of a petition approved for classification under INA 203(b)(4) shall be six months beyond the date of the Secretary of State's approval thereof or the availability of a visa number, whichever is later. In cases described in section 42.32(d)(2)(ii), the validity of the petition shall not in any case extend beyond January 1, 2002.

[56 FR 51172; Oct. 1, 1991]

(v) Extension of Petition Validity

(TL:VISA-101; 11-25-94)

If the principal officer of a post concludes that circumstances in a particular case are such that an extension of the validity of the Secretary's approval of special immigrant status or of the petition would be in the national interest, the principal officer shall recommend to the Secretary of State that such validity be extended for not more than one additional year.

[56 FR 51172; Oct. 1, 1991]

(vi) Fees

(TL:VISA-101; 11-25-94)

The Secretary of State shall establish a fee for the filing of a petition to accord status under INA 203(b)(4) which shall be collected following notification that the Secretary has approved status as a special immigrant under INA 101(a)(27)(D) for the alien.

[56 FR 51172; Oct. 1, 1991]

(vii) Delegation of Authority to Approve Petitions

(TL:VISA-101; 11-25-94)

The authority to approve petitions to accord status under INA 203(b)(4) to an alien described in INA 101(a)(27)(D) is hereby delegated to the chief consular officer at the post of recommendation or, in the absence of the consular officer, to any alternate approving officer designated by the principal officer. Such authority may not be exercised until the Foreign Service post has received formal notification of the Secretary's approval of special immigrant status for the petitioning alien.

[56 FR 51172; Oct. 1, 1991]

9 FAM 42.32(d)(2) Related Statutory Provisions and Regulation

INA 101(a)(27)(D)

(TL:VISA-101; 11-25-94)

(D) an immigrant who is an employee, or an honorably retired former employee of the United States Government abroad or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children:

Provided, That the principal officer of a Foreign Service establishment, (or, in the case of the American Institute in Taiwan, the Director thereof) in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

[Amended by sec. 201 of Pub. L. 103-416, Oct. 25, 1994]

(TL:VISA-48; 10-1-91)

For the provisions of INA 203(b)(4), see section 9 FAM 42.32(d)(1) Related Statutory Provisions.

INA 204(a)(1)(E)

(TL:VISA-101; 11-25-94)

(E)(i)-Any alien (other than a special immigrant under section 101(a)(27)(D)) desiring to be classified under section 203(b)(4), or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 101(a)(27)(D) may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

[Amended by sec. 162(b)(1) of Pub. L. 101-649; Nov. 29, 1990]

Sec. 152 of the Immigration Act of 1990 (Pub. L. 101-649)

Special Immigrant Status for Certain Aliens Employed at the United States Mission in Hong Kong (D Special Immigrant) (TL:VISA-101; 11-25-94)

(a) IN GENERAL. -Subject to subsection (c) , an alien described in subsection (b) shall be treated as a special immigrant described in section 101(a)(27)(D) of the Immigration and Nationality Act.

(b) ALIENS COVERED. -An alien is described in this subsection if-

(1) the alien is-

(A) an employee at the United States consulate in Hong Kong under the authority of the Chief of Mission (including employment pursuant to section 5913 of title 5, United States Code) and has performed faithful service as such an employee for a total of three years or more, or

(B) a member of the immediate family (as defined in 6 Foreign Affairs Manual 117k as of the date of the enactment of this Act) of an employee described in subparagraph (A) who has been living with the employee in the same household;

(2) the welfare of the employee or such an immediate family member is subject to a clear threat due directly to the employee's employment with the United States Government or under a United States Government official; and

(3) the principal officer in Hong Kong, in the officer's discretion, has recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status.

(c) EXPIRATION. -Subsection (a) shall only apply to aliens who file an application for special immigrant status under this section by not later than January 1, 2002.

(d) LIMITED WAIVER OF NUMERICAL LIMITATIONS. -The first 500 visas made available to aliens as special immigrants under this section shall not be counted against any numerical limitation established under section 201 or 202 of the Immigration and Nationality Act.

[Added by sec. 152 of Pub. L. 101-649; Nov. 29, 1990]

Foreign Affairs Manual SEC. 117k

(TL:VISA-48; 10-1-91)

k. Family means:

(1) Children who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support. The term shall include, in addition to natural offspring, stepchildren and adopted children and those under legal guardianship of the employee or the spouse when such children are expected to be under such legal guardianship at least until they reach 21 years of age and when dependent upon and normally residing with the guardian;

(2) Parents (including stepparents and legally adoptive parents) of the employee or spouse, when such parents are at least 51 percent dependent on the employee for support....

(3) Sisters and brothers (including stepsisters or stepbrothers or adoptive sisters or brothers) of the employee, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support....

(4) Spouse;.... Government Employees